

**REMARKS**

Applicant respectfully requests that the application be reconsidered in view of the above amendments and the following remarks. In the Office Action, dated July 23, 2004, the Examiner objected to the specification, and to claims 6, 18 and 28, as containing undefined abbreviations. The Examiner further rejected claims 5, 17 and 27 under 35 U.S.C. §112, second paragraph, as being indefinite due to reciting undefined abbreviations. The Examiner additionally rejected claims 14-16 and 19-21 under 35 U.S.C. §102(b) as allegedly being anticipated by U. S. Patent No. 6,371,691 (hereinafter "FINZEL"). The Examiner also rejected claims 1-13, 18, 22-26 and 28-31 under 35 U.S.C. §103(a) as allegedly being unpatentable over FRINZEL.

By way of this amendment, Applicant has amended claims 1-3, 23 and 24 to improve form. The specification, and claims 6 and 28, has been amended to correct informalities. Claims 5, 14-22, 27 and 30 have been canceled without prejudice or disclaimer. New claim 32 has been added. No new matter has been added by way of the present amendment. Reconsideration of the outstanding rejection of pending claims 1-4, 6-13, 23-26, 28, 29, 31 and 32 is respectfully requested in view of the amendments above and the following remarks.

In paragraph 1, the Office Action has objected to the abbreviations "HDPE" and "HD20" in the specification. The specification has been amended to include "high density polyethylene (HDPE)." "HD20" has additionally been corrected to "H20," and the known definition of an H20 load rating has been inserted. "H20" is an American Society for Testing and Materials (ASTM) load standard that indicates that a load rated body can withstand 20,000 lbs. from a single vehicle axle. In view of the amendments to the specification, withdrawal of this objection is respectfully requested.

In paragraph 2, the Office Action objects to the abbreviation "HDPE" in pending claims 6 and 28. Applicant has amended these claims to include "high density polyethylene (HDPE)." Withdrawal of this objection is, therefore, respectfully requested.

In paragraph 4, the Office Action has rejected pending claims 5 and 27 under 35 U.S.C. §112, second paragraph, as being indefinite due to reciting the abbreviation "HD20." Claims 5 and 27 have been canceled, therefore, the rejection of these claims under 35 U.S.C. §112, second paragraph, is moot.

In paragraph 6, the Office Action rejects claims 14-16 and 19-21 under 35 U.S.C. §102(b) as allegedly being anticipated by FINZEL. Claims 14-16 and 19-21 have been canceled by the present amendment and, therefore, this rejection is moot. Withdrawal of this rejection is, thus, respectfully requested.

In paragraph 8, the Office Action rejects pending claims 1-4, 6-13, 23-26, 28, 29 and 31 under 35 U.S.C. §103(a) as allegedly being unpatentable over FINZEL. Applicant respectfully traverses with respect to the amended claims.

Amended independent claim 1 recites a method that includes cutting a trench in a surface of the roadway and placing a duct in the trench. The method further includes filling the trench with a sealer and placing a first cable within the duct. The method also includes pulling the first cable out of, and through, the duct and placing a second cable within the duct without removing the sealer within the trench. FINZEL does not disclose or suggest this combination of features.

For example, FINZEL does not disclose placing a first cable within a duct, pulling the first cable out of, and through, the duct and placing a second cable within the duct without removing sealer within a trench. FINZEL discloses the laying of a tubular "mini-cable,"

containing optical waveguides or conductors, within a trench cut into sand, gravel, earth, or asphalt (column 8, lines 27-44). Once the mini-cable containing the optical waveguides or conductors is laid, FINZEL discloses filling the trench with a material, such as bitumen (column 10, 40-41). To repair the optical waveguides or conductors placed in the mini-cable, FINZEL discloses that the material filled in the trench must be removed so that the mini-cable can be lifted out of the trench (column 24, line 66 through column 25, line 2; column 25, line 55 through column 26, line 3; column 4, lines 31-34). FINZEL does not disclose, or even suggest, removal of the optical waveguide or conductor from the mini-cable and placing a repaired optical waveguide or conductor, or a new optical waveguide or conductor, back within the mini-cable *without removing the material from the trench*. FINZEL, thus, does not disclose “placing a first cable within the duct,” “pulling the first cable out of, and through, the duct,” and “placing a second cable within the duct without removing the sealer within the trench,” as recited in amended claim 1. Since FINZEL does not suggest or disclose the combination of features recited in claim 1, Applicant respectfully requests withdrawal of the rejection of amended claim 1.

Claims 2-4 and 6-13 depend from claim 1. These claims, therefore, patentably distinguish over FINZEL for at least the reasons set forth above with respect to claim 1.

Independent claim 23 recites a method of placing cable within concrete or asphalt. The method includes cutting a trench into the concrete or asphalt to a depth of approximately 3.5 to 4.0 inches from a surface of the concrete or asphalt, and placing a tubular material having a hollow inner diameter within the trench. The method further includes filling at least a portion of the trench with a sealer and placing a first cable within the tubular material. The method also

includes removing the first cable from the tubular material without removing the sealer from the trench and placing a second cable within the tubular material without removing the sealer from the trench.

As discussed above with respect to claim 1, FINZEL merely discloses the removal of the material in the trench prior to lifting out the mini-cable, that includes the optical waveguides or conductors, from the trench for repair (column 24, line 66 through column 25, line 2; column 25, line 55 through column 26, line 3; column 4, lines 31-34). FINZEL, thus, does not disclose, or even suggest, removal of the optical waveguide or conductor from the mini-cable and placing a repaired optical waveguide or conductor, or a new optical waveguide or conductor, back within the mini-cable without removing the material from the trench. FINZEL, thus, does not disclose “filling at least a portion of the trench with a sealer,” “placing a first cable within the tubular material,” “removing the first cable from the tubular material without removing the sealer from the trench,” and “placing a second cable within the tubular material without removing the sealer from the trench,” as recited in amended claim 23. Since FINZEL does not suggest or disclose the combination of features recited in claim 23, Applicant respectfully requests withdrawal of the rejection of amended claim 23.


Claims 24-26, 28, 29 and 31 depend from claim 23. These claims, therefore, patentably distinguish over FINZEL for at least the reasons set forth with respect to claim 23 above.

New dependent claim 32 recites “wherein the first cable is pulled out of, and through, the duct without removing the sealer within the trench.” As discussed above, FINZEL merely discloses the removal of the material in the trench prior to lifting out the mini-cable from the

trench for repair. FINZEL does not suggest or disclose pulling the first cable out of, and through, the duct without removing the sealer within the trench, as recited in claim 32.

In view of the foregoing amendments and remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and the timely allowance of the pending claims. To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 13-2491 and please credit any excess fees to such deposit account.

Respectfully submitted,

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Date: October 21, 2004

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